

Chapter 82a, Article 3
OBSTRUCTIONS IN STREAMS
K.S.A. 82a-301 through 82a-328
Revised 2010

K.S.A. 82a-301. Permit or consent of chief engineer required to construct dams or other water obstructions; exceptions. (a) Without the prior written consent or permit of the chief engineer of the division of water resources of the Kansas department of agriculture, it shall be unlawful for any person, partnership, association, corporation or agency or political subdivision of the state government to: (1) Construct any dam or other water obstruction; (2) make, construct or permit to be made or constructed any change in any dam or other water obstruction; (3) make or permit to be made any change in or addition to any existing water obstruction; or (4) change or diminish the course, current, or cross section of any stream within this state. Any application for any permit or consent shall be made in writing in such form as specified by the chief engineer. Jetties or revetments for the purpose of stabilizing a caving bank which are properly placed shall not be construed as obstructions for the purposes of this section.

(b) As used in K.S.A. 82a-301 et seq., and amendments thereto, “dam” means any artificial barrier including appurtenant works with the ability to impound water, waste water or other liquids that has a height of 25 feet or more; or has a height of six feet or greater and also has the capacity to impound 50 or more acre feet. The height of a dam or barrier shall be determined as follows: (1) A barrier or dam that extends across the natural bed of a stream or watercourse shall be measured from the down stream toe of the barrier or dam to the top of the barrier or dam; or (2) a barrier or dam that does not extend across a stream or watercourse shall be measured from the lowest elevation of the outside limit of the barrier or dam to the top of the barrier or dam. (**History:** L. 1929, ch. 203, § 1; L. 1978, ch. 431, § 6; L. 2002, ch. 138, § 2; July 1.)

K.S.A. 82a-301a. Exclusive regulation and supervision of dams and other water obstructions by chief engineer. It is the intent of the legislature by this act to provide for the exclusive regulation of construction, operation and maintenance of all dams or other water obstructions by the state to the extent required for the protection of public safety. All dams or other water obstructions are declared to be under the jurisdiction of the division of water resources of the Kansas department of agriculture and the chief engineer thereof. The chief engineer or his or her authorized representative shall supervise the construction, modification, operation and maintenance of dams or other water obstructions for the protection of life and property. (**History:** L. 1978, ch 431, § 1; L. 2004, ch.101, § 135; July 1.)

K.S.A. 82a-302. Same; maps, plans, profiles and specifications to accompany application. (a) Each application for the consent or permit required by K.S.A. 82a-301, and amendments thereto, shall be accompanied by complete maps, plans, profiles and specifications of such dam or other water obstruction, or of the changes or additions proposed to be made in such dam or other water obstruction, the required application fee as provided in subsection (b) unless otherwise exempted, and such other data and information as the chief engineer may require. The chief engineer shall maintain a list of licensed professional engineers who may

conduct the review of any application for the consent or permit required by K.S.A. 82a-301, and amendments thereto. Such list may include licensed professional engineers employed by a local unit of government. Notwithstanding any law to the contrary, an applicant for the consent or permit required by K.S.A. 82a-301, and amendments thereto, may have the application reviewed by a licensed professional engineer approved by the chief engineer pursuant to this subsection provided such engineer is not an employee of the applicant. If such licensed professional engineer finds that such dam or other water obstruction meets established standards for the construction, modification, operation and maintenance of dams and other water obstructions, such findings shall be submitted in complete form to the chief engineer. Upon such submittance, the chief engineer shall grant such consent or permit within 45 days unless the chief engineer finds to the contrary that such dam or other water obstruction does not meet established standards for the construction, modification, operation and maintenance of dams and other water obstructions. If the chief engineer declines to grant such consent or permit based upon a contrary finding, the chief engineer shall provide to the applicant within 15 days a written explanation setting forth the basis for the chief engineer's contrary finding. The chief engineer's action in declining to grant such consent or permit and any hearing related thereto shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any person aggrieved by any order or decision of the chief engineer shall be entitled to appellate review in accordance with the provisions of the Kansas judicial review act. Such applicant shall pay all costs associated with the review by the licensed professional engineer.

(b) (1) The application shall be based upon the stage of construction at the time that a complete application has been submitted. The construction in progress fee shall be applicable for construction begun prior to approval by the chief engineer. Such fee shall be in addition to any other penalty for an unpermitted structure. Such fees shall be as follows:

Fees for new dam or dam modification applications

Pre-Construction	Construction In Progress
\$200	\$500

(2) Permit fees for stream obstructions/channel changes application fee is based upon two criteria and are as follows:

- (A) The drainage area category; and
- (B) the stage of construction when the application is submitted.

Drainage Area Category	Pre-Construction	Construction In Progress
Major (Drainage area greater than 50 square miles)	\$500	\$1000
Moderate (Drainage area 5 to 50 square miles)	\$200	\$400
Minor (Drainage area less than 5 square miles)	\$100	\$200
General Permit	\$100	\$200

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 2009 Supp. 82a-328, and amendments thereto. **(History:** L. 1929, ch. 203, § 2; L. 1978, ch 431, § 7; L. 2002, ch. 138, § 3; July 1; L. 2010, ch 17, § 211, July 1.)

K.S.A. 82a-303. Same; conditions to permits; unlawful acts. The chief engineer of the division of water resources shall have power to grant or withhold such consent or permit or may incorporate in and make a part of said consent or permit such terms, conditions and restrictions as may be deemed by him or her advisable. It shall be unlawful to: (a) Construct or begin the construction of any dam or other water obstruction, or (b) make or begin any change or addition in any dam or other water obstruction, except in accordance with the terms, conditions and restrictions of such consent or permit, and such rules and regulations as may be adopted by the chief engineer of the division of water resources. (**History:** L. 1929, ch. 203, § 3; L. 1978, ch. 431, § 8; April 11.)

K.S.A. 82a-303a. Rules and regulations by chief engineer. The chief engineer of the division of water resources of the Kansas department of agriculture shall adopt and may from time to time amend rules and regulations in order to establish standards for the construction, modification, operation and maintenance of dams and other water obstructions and to administer and enforce the provisions of this act. (**History:** L. 1978, ch. 431, § 2; L. 2004, ch. 101, § 136; July 1.)

K.S.A. 82a-303b. Inspection of dams by chief engineer; access to private property; costs of inspection. (a) (1) In order to secure conformity with adopted rules and regulations and to assure compliance with the terms, conditions or restrictions of any consent or permit granted pursuant to the provisions of K.S.A. 82a-301 through 82a-303, and amendments thereto, the chief engineer or an authorized representative of the chief engineer shall have the power and the duty to inspect any dam or other water obstruction. Upon a finding pursuant to subsection (a) of K.S.A. 82a-303c, and amendments thereto, by the chief engineer that a dam is unsafe, the chief engineer shall order an annual inspection of the dam until it is either in compliance with all applicable provisions of this act, any rules and regulations promulgated pursuant to this act, permit conditions and orders of the chief engineer; or the dam is removed. The safety inspection shall be conducted by the chief engineer or authorized representative and the cost shall be paid by the dam owner. The class and size of a dam provided for by the provisions of this act shall be defined by rules and regulations adopted by the chief engineer pursuant to K.S.A. 82a-303a, and amendments thereto. Inspection fees are as follows:

Size of Dam	Inspection fee
Class 1	\$1,500
Class 2	\$1,500
Class 3	\$2,500
Class 4	\$4,000

(2) Each hazard class C dam shall be required to have a safety inspection conducted by a licensed professional engineer qualified in design, construction, maintenance and operation of dams once every three years, unless otherwise ordered by the chief engineer.

(3) Each hazard class B dam shall be required to have a safety inspection conducted by a licensed professional engineer qualified in design, construction, maintenance and operation of dams once every five years unless otherwise ordered by the chief engineer.

(4) Within 60 days of the date of inspection, a report of the inspection shall be provided to the chief engineer by the licensed professional engineer who conducted the inspection. The report shall document the physical condition of the dam, describing any

deficiencies observed, an analysis of the capacity of the dam and its spillway works, compliance of the dam with approved plans and permit conditions, changes observed in the condition of the dam since the previous inspection, an assessment of the hazard classification of the dam including a statement that the engineer either agrees or disagrees with the current classification, and any other information relevant to the safety of the dam or specifically requested by the chief engineer.

(5) Upon failure of a dam owner to comply with the applicable inspection interval, the chief engineer or such chief engineer's authorized representative shall conduct a mandatory inspection of the dam and the costs as established by this act for the inspection shall be paid by the owner, in addition to any other remedies provided for violations of this act.

(6) The failure to file a complete and timely report as required by the provisions of this act, or the failure to submit the fees assessed for inspections conducted by the chief engineer or such chief engineer's authorized representative shall be deemed a violation of this act and subject to the penalties provided by K.S.A. 82a-305a, and amendments thereto.

(b) For the purpose of inspecting any dam or other water obstruction, the chief engineer or an authorized representative of the chief engineer shall have the right of access to private property. Costs for any work which may be required by the chief engineer or the authorized representative prior to or as a result of the inspection of a dam or other water obstruction shall be paid by the owner, governmental agency or operator of such dam or other water obstruction.

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in section 5, and amendments thereto. (**History:** L. 1978, ch. 431, § 3; L. 2002, ch. 138, § 4; July 1.)

K.S.A. 82a-303c. Violations of conditions or restrictions of permit or of rules and regulations; orders of chief engineer; remedial measures; emergency situations. (a) Whenever the chief engineer finds that: (1) The construction, modification, operation or maintenance of a dam or other water obstruction is in violation of adopted rules and regulations or of terms, conditions or restrictions of a permit or consent granted by the chief engineer or, (2) conditions exist in the construction, modification, operation or maintenance of a dam or other water obstruction which may present a hazard to the public's safety, he or she shall issue an order to require the correction of any such violation or condition existing in the construction, modification, operation or maintenance of a dam or other water obstruction by the owner or operator thereof. An order may be issued to require the removal of a dam or other water obstruction. The order shall contain the chief engineer's findings concerning any violation or conditions existing and shall prescribe the corrective action to be taken.

(b) Whenever the condition of any dam or other water obstruction is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to construction, modification, maintenance or operation thereof, or, the passing of imminent floods threaten the safety of any dam or other water obstruction, the chief engineer shall immediately employ any remedial means necessary to protect the safety of life or property. The chief engineer shall continue in full charge and control of any such dam or other water

obstruction until the same is rendered safe or the emergency occasioning the remedial action has ceased. (**History:** L. 1978, ch. 431, § 4; April 11.)

K.S.A. 82a-304. (**History:** L. 1929, ch. 203, § 4; L. 1933, ch. 330, § 1; L. 1978, ch. 431, § 9; Repealed, L. 2002, ch. 138, § 8; July 1.)

K.S.A. 82a-305. (**History:** L. 1929, ch. 203, § 5; L. 1945, ch. 389, § 1; Repealed, L. 1978, ch. 431, § 10; April 11.)

K.S.A. 82a-305a. Unlawful acts; penalties; injunction. (a) Any person, partnership, association, corporation or agency or political subdivision of the state government who violates any provision of this act or of any rule and regulation or order issued pursuant thereto shall be deemed guilty of a class C misdemeanor. Each day that any such violation occurs after notice of the original violation is served upon the violator by the chief engineer by restricted mail shall constitute a separate offense.

(b) Upon request of the chief engineer, the attorney general shall bring suit in the name of the state of Kansas in any court of competent jurisdiction to enjoin (1) the unlawful construction, modification, operation or maintenance of any dam or other water obstruction, or (2) the unlawful change or diminution of the course, current or cross section of a river or stream. Such court may require the removal or modification of any such dam or other water obstruction by mandatory injunction. (**History:** L. 1978, ch. 431, § 5; April 11.)

K.S.A. 82a-306. (**History:** L. 1929, ch. 143, § 1, Repealed, L. 131, ch. 318, § 6; March 12.)

K.S.A. 82a-307. Cleaning and maintaining banks and channels by county; petition; claims for damages. Upon petition of fifty (50) taxpayers of any county of this state, owning land in the flood plain of any river in such county, the board of county commissioners of each county in this state are hereby authorized within their respective jurisdictions to clean and maintain the banks and channels of the streams and watercourses within definitely established bank lines, as provided in K.S.A. 82a-307a, and to keep said streams free of drift, trees and other obstructions, for the purpose of reducing floods and overflows; and for the purposes aforesaid the said board of county commissioners may enter upon private property, if necessary, to clean and maintain such streams, doing as little damage as possible thereto, and when material damage shall be done to any property, said commissioners shall allow reasonable compensation therefor, when claimed by the owner thereof, if said claim is presented in writing to said board within ten (10) days from the date of the removal of said obstruction; and that nothing in this act shall be construed to permit the board of county commissioners of any county to remove or destroy any permanent improvement, including dams and bridges, in and over such streams, providing such improvements, dams or bridges have been lawfully placed thereon. (**History:** L. 1929, ch. 143, § 2; L. 1931, ch. 318, § 1; L. 1951, ch. 527, § 1; June 30.)

K.S.A. 82a-307a. Same; preliminary survey; approval of plan by state engineer. Before doing the work provided for in K.S.A. 82a-307 the board of county commissioners shall, by resolution, duly passed, adopt this act, and shall cause a survey to be made showing definitely

the bank lines to which said stream is to be cleaned and maintained, obstructions to be removed and the mileage of the banks of such streams in that county, and shall submit to the division of water resources, Kansas department of agriculture, a map showing the bank lines so established to which it is proposed to clean and maintain the stream and showing obstructions which it is proposed to remove. Such plan shall have had the approval of the chief engineer of the division of water resources before the board is authorized to proceed with the work. (**History:** L. 1931, ch. 318, § 2; L. 2004, ch. 101, § 137; July 1.)

K.S.A. 82a-308. Same; expenses and damages; tax levy, use of proceeds. Any expenses incurred in removing such obstructions as are mentioned in K.S.A. 82a-307 and amendments thereto, or damage to private property, shall be paid out of the general fund of the respective counties but if it shall appear that the obstructions were caused by owners of adjoining property, the expenses shall be charged to the adjoining property as a special tax to be levied and collected as other special taxes and assessments. In the event that the general fund of any county shall not be sufficient to bear the cost of the operations mentioned in this section, including the maintenance of such streams or watercourses, then the board of county commissioners of such county may levy an annual tax upon all property in the county for the purpose of creating a fund known as stream maintenance fund from which fund the costs and expenses of the operation herein provided for shall be paid and for the purpose of paying a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. (**History:** L. 1929, ch. 143, § 3; L. 1931, ch. 318, § 3; L. 1970, ch. 100, § 44; L. 1980, ch. 65, § 8; L. 1999, ch. 154, § 47; May 27.)

K.S.A. 82a-309. Distribution of proceeds from sale of sand products taken from river beds owned by state. (a) Of compensation received for sand products sold pursuant to K.S.A. 70a-102 and amendments thereto, \$.0375 per ton sold shall be returned as follows:

(1) If the sand products are taken from the bed of the river at a location which is within the boundaries of a drainage district, the board of directors of the district from which the sand products were taken shall be entitled to receive $\frac{2}{3}$ of the amount returned and the remaining $\frac{1}{3}$ shall be divided among the remaining drainage districts in the county, to be used for bank stabilization, soil conservation, or maintenance and operation of flood control systems, in proportion to the frontage on such river.

(2) If the sand products are taken from the bed of the river at a location which is not within the boundaries of a drainage district, the proceeds attributable to such sand products shall be returned to the counties which have adopted this act and have notified, prior to July 1 following the adoption of this act, the director of taxation of such adoption, and through which such river flows, in proportion to the mileage of the river bank in such county. Moneys paid to a county pursuant to this paragraph shall be disbursed or used as follows:

(A) If there are one or more drainage districts organized under the laws of this state which are located in such county along a river that is the property of the state of Kansas and which operate and maintain river flood control improvements in or along such river, the county shall disburse such moneys to each such drainage district, to be used for bank stabilization, soil conservation, or maintenance and operation of flood control systems, in proportion to each district's frontage on such a river.

(B) If there is no drainage district organized under the laws of this state which is located in such county along a river that is the property of the state of Kansas, the county may

use the moneys for construction, operation and maintenance of public improvements located along, in or over such a river or for the preservation of land and development and maintenance of public areas along such river or tributaries adjacent to such river.

(b) The unencumbered balance of any moneys which were distributed to a county pursuant to this section as it existed before its amendment on July 1, 1995, and which remain in the county treasury on July 1, 1995, shall be distributed in the manner provided by this section as amended on July 1, 1995. **(History:** L. 1929, ch. 143, § 4; L. 1931, ch. 318, § 4; L. 1933, ch. 331, § 1; L. 1933, ch. 249, § 6; L. 1937, ch. 387, § 1; L. 1961, ch. 311, § 7; L. 1992, ch. 109, § 2; L. 1995, ch. 238, § 2; L. 1996, ch. 144, § 2; July 1.)

K.S.A. 82a-310. **(History:** L. 1931, ch. 318, § 5; Repealed, L. 1995, ch. 238, § 3; July 1.)

K.S.A. 82a-311. Same; cost of surveys; how paid; division of balances of proceeds. In any county in this state which, prior to the adoption of this act, has received any of the proceeds from the sale of sand products and which failed to have a survey made, as provided in K.S.A. 82a-307a, which survey was made by drainage districts in said county, the county commissioners are directed to pay to drainage districts which have had the survey made or which shall, within one year after the taking effect of this act have such survey made, the costs of such surveys, and the balances of said proceeds shall be divided among said drainage districts in proportion to the frontage on such rivers. **(History:** L. 1937, ch. 387, § 2; March 31.)

K.S.A. 82a-312. Dams built under federal agricultural program; approval by chief engineer. Any landowner or operator who desires to construct, or who has constructed a dam, for agricultural purposes on his or her own land or land operated by him or her, as a part of the federal agricultural conservation program without complying with the provisions of K.S.A. 82a-301 to 82a-305, both sections inclusive, may make application to the chief engineer of the division of water resources for approval of the construction of such dams. **(History:** L. 1939, ch. 354, § 1; March 14.)

K.S.A. 82a-313. Same; plans to accompany application. Each application for such approval shall be accompanied by plans of the dam that has been built or shall be built showing the area of the drainage basin above the dam, a cross section of the dam site, a cross section, plan and elevation of the dam, a plan of the spillway and such other data and information as the chief engineer of the division of water resources may require. **(History:** L. 1939, ch. 354, § 2; March 14.)

K.S.A. 82a-314. Same; revision of plans. If the plans are found to be satisfactory and upon examination, the dam is found to be constructed in accordance with such plans, the chief engineer shall approve the plans and the construction of the dam. If the plans fail to meet the requirements of the chief engineer, the owner shall make such changes in or additions to the dam as may be required and submit revised plans. If such revised plans are satisfactory and the dam is found to be constructed in accordance with them, the chief engineer shall approve such revised plans and construction. **(History:** L. 1939, ch. 354, § 3; March 14.)

K.S.A. 82a-315 to 82a-324. Reserved.

K.S.A. 82a-325. Water projects environmental coordination act; purpose. (a) This act shall be known and may be cited as the water projects environmental coordination act.

(b) In order to protect the environment while facilitating the use, enjoyment, health and welfare of the people of the state of Kansas, it is necessary that the environmental effect of any water development project be considered before such water development project is approved or permitted. (**History:** L. 1987, ch. 400, § 1; July 1.)

K.S.A. 82a-326. Water projects environmental coordination act; definitions. When used in this act:

(a) "Water development project" means any project or plan which may be allowed or permitted pursuant to K.S.A. 24-126, 24-1213, 82a-301 et seq., and amendments thereto, or the multipurpose small lakes program act, and amendments thereto;

(b) "environmental review agencies" means the:

- (1) Kansas department of wildlife and parks;
- (2) Kansas forest service;
- (3) state biological survey;
- (4) Kansas department of health and environment;
- (5) state historical society;
- (6) state conservation commission; and
- (7) state corporation commission. (**History:** L. 1987, ch. 400, § 2; L. 1989, ch. 118, § 192; L. 1991, ch. 290, § 10; L. 1997, ch. 49, § 5; July 1.)

K.S.A. 82a-327. Same; review of proposed project; considerations. (a) Prior to approval or issuance of a permit for a proposed water development project, the permitting agency shall obtain a review of the proposed project for environmental effects by the appropriate state environmental review agencies, and shall consider their comments in determining whether to approve or issue a permit for such project. The permitting agency may condition the approval of or permit for the project in a manner to address the environmental concerns of the environmental review agencies.

(b) In reviewing a proposed water development project, the environmental review agency shall consider:

- (1) The beneficial and adverse environmental effects of a proposed project on water quality, fish and wildlife, forest and natural vegetation, historic, cultural, recreational, aesthetic, agricultural and other natural resources;
- (2) the means and methods to reduce adverse environmental effects of a proposed project; and
- (3) alternatives to a proposed project with significant adverse environmental effects.

(c) Each environmental review agency shall send its written comments on the proposed project within 30 days of receipt of the proposal from the permitting agency.

(d) Nothing in this act shall be construed as prohibiting a permitting agency from approving or issuing a permit if an environmental review agency determines adverse environmental effects will result if the project is approved or permitted. Nothing in this act shall be construed as preempting or duplicating any existing environmental review process otherwise provided or authorized by law. **(History:** L. 1987, ch. 400, § 3; July 1.)

K.S.A. 82a-328. Water structures fund. There is hereby created in the state treasury the water structures fund. The chief engineer of the division of water resources, Kansas department of agriculture shall remit all moneys received under K.S.A. 82a-302, 82a-303b and 24-126, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the water structures fund. All expenditures from the water structures fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person designated by the secretary. **(History:** L. 2002, ch. 138, § 5; July 1.)